

Even though sales may be at retail, the Illinois Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in production agriculture or in State or federal agricultural programs. See 86 Ill. Adm. Code 130.305. (This is a GIL).

September 17, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am making this request for your understanding, consideration and correction of a situation regarding an application of sales tax.

The basis for this - Part 130 ROT - Subpart C - certain statutory exemptions - Section 130:305 Farm Machinery and equipment group① - a certain portion which states 'Certain machines generally qualify for the exemption if purchased by farmers directly from retailers - such as machines include but are not limited to augers - grain dryers ('heaters and fans')

We have a grain bin that could be used for shelled corn or beans - located several miles from the home base. All the buildings from this gone except the bin and it has not been in use due to damage & lower rusted out sheets. The bin was repaired this summer and ready for use. Now then - no electrical power is on site and power line about 3/8 mile away. Checking with power company to put in poles and string cable for maybe 6-8 days of service of use - was a terrible expense and monthly bills for nothing.

So - to be able to use the unit - a generator was needed to be able to use the fans and augers.

This unit was purchased at COMPANY and they did charge sales tax. It was disguised with those folks and the lady in turn called the head office of company. It was felt that they should charge the tax to keep out of any trouble, but in this case the tax should have been exempt.

This request is a short over view - if more details are required - please advise. The forms from your office to get the correction and

adjustment will certainly be appreciated. The dollar amount is in the \$73.00 range - and while not a huge figure, in this year of super hot weather and low low grain prices, it will be a benefit and also will be what is fair and correct.

Thank you for your consideration.

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to sales of machinery and equipment used primarily in production agriculture or in State or federal agricultural programs. See 86 Ill. Adm. Code 130.305, enclosed. The term "machinery" means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or federal agricultural programs. The term "equipment" means any independent device or apparatus separate from any machinery, but essential to production agriculture.

Please be informed that for purposes of the exemption, farm machinery does not include improvements to real estate such as fences, barns, grain bins, silos and confinement buildings. See 86 Ill. Adm. Code 130.305(i). Similarly, equipment does not include ordinary building materials to be permanently affixed to real estate. See Section 130.305(k). However, certain machinery and equipment may qualify even though they are installed as realty improvements. Some examples are augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), specialty heating and lighting equipment specifically required for the production process (i.e., ultraviolet lights, and specialty heaters for incubation), farrowing crates, and portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. See 86 Ill. Adm. Code 130.305(i) and (k).

An alternator or generator used in the production of electricity to operate machinery or equipment that qualified for an exemption would also qualify for the exemption. For example, equipment used to generate electricity to operate a grain dryer or auger required by the production process would qualify for the exemption. However, equipment used to generate electricity for general heating, lighting, or ventilation equipment would not qualify for the exemption. The alternator or generator must be primarily used in production agriculture (i.e., used in a qualifying manner over 50% of the time) in order to be exempt.

Please note that purchasers that claim the farm machinery and equipment exemption are required to provide the certification or blanket certification described in Section 130.305(m) to their suppliers.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Payment of tax on qualifying exempt farm machinery and equipment would be considered a mistake of fact. No credit shall be given unless the taxpayer shows that he or she has either borne the burden of the tax or that he or she has unconditionally repaid the amount of tax to the purchaser from whom it was collected. See the enclosed

copy of 86 Ill. Adm. Code 130.1501. In your case, if you determine that the generator is used primarily in production agriculture, you should return to the store that you purchased it from and give it an exemption certificate. You could also present a copy of this letter. Once the store refunds the amount of tax paid to you, it can request a credit from the Department because it has then borne the burden of the tax. Illinois law does not require the store to refund the amount of tax paid by you. Whether or not the store agrees to apply for a credit is a matter of business practice between the store and the purchaser.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.